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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

ALEENA C.,

Petitioner,

v.

THE SUPERIOR COURT OF  
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Real Party in Interest.

F069867

(Super. Ct. No. 516932)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.  
Ameral, Judge.

Parent Advocates of Stanislaus and Thomas P. White, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County  
Counsel, for Real Party in Interest.

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\* Before Gomes, Acting P.J., Kane, J., and Franson, J.

At a contested dispositional hearing in July 2014, the juvenile court adjudged then 11-month-old Kayson a dependent child under Welfare and Institutions Code section 300, subdivisions (a), (b) and (e),<sup>1</sup> denied his parents, Aleena and Jared, reunification services under section 361.5, subdivision (b)(5) and (6), and set a section 366.26 hearing. Aleena challenges the juvenile court's setting order by extraordinary writ petition. (Cal. Rules of Court, rule 8.450.)<sup>2</sup> She contends the evidence was insufficient to support a jurisdictional finding under section 300, subdivision (e) and to deny reunification services under section 361.5, subdivision (b)(5) and (6). She asks this court to issue a writ, directing the juvenile court to vacate its setting order and return Kayson to her custody or provide her reunification services. We conclude substantial evidence supports the juvenile court's jurisdictional finding under subdivision (e) of section 300, but not its order denying her reunification services under section 361.5, subdivision (b)(5) and (6). Thus, we grant the petition in part and deny it in part.

### **PROCEDURAL AND FACTUAL SUMMARY**

Kayson was born premature in August 2013 when Aleena and Jared were 16 and 17 years old respectively. At all times thereafter Aleena was Kayson's primary caregiver. These dependency proceedings were initiated in January 2014 after then four-month-old Kayson presented with macrocephaly and a bulging fontanelle and underwent surgery for bilateral subdural hematomas. Aleena and Jared could not explain the cause of Kayson's medical condition. Dr. Hyden, the child advocacy attending physician, opined Kayson's subdural hematomas were most likely caused by trauma and in the absence of an explanation, "the possibility of nonaccidental injury is high concerning."

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Jared did not file a writ petition.

Even if inflicted injury were not the cause, Dr. Hyden further opined, “there is also the concern for a significant delay in seeking medical care [which] may have contributed to ... the ongoing hemorrhaging, and ... increasing intracranial pressure ....”

No one disputes that Kayson suffered a serious physical injury. The question is whether substantial evidence supports a finding that Aleena caused his injury by physically abusing him or by failing to obtain medical treatment for him. Based on our summary of the facts which follows, we conclude it does not.

Kayson was admitted to the neonatal intensive care unit (NICU) at birth for respiratory distress. He was intubated, treated and discharged at one week of age to Aleena and Jared’s care with no complications. His head measured 31 centimeters and was normocephalic (normal shape and size for his age).

Kayson’s pediatrician in Fresno evaluated him on August 30, 2013 at 10 days of age and on September 6, 2013 at 17 days of age, each time noting that he was normocephalic. On October 8, 2013, Aleena took then seven-week-old Kayson to the emergency room. Aleena told the medical staff he was crying more than usual that day. His medical records reflect that he was alert and his fontanelle was flat. The physician recorded that it was a normal exam. On October 16, 2013, then 57-day-old Kayson was evaluated by his pediatrician who noted that his head was normocephalic and atraumatic and measured 37.5 centimeters. That same day, Aleena and Jared moved with Kayson to Modesto to live with Jennifer R., a close friend and a nurse with many years of experience.

On December 16, 2013, Aleena and Jared took Kayson to be evaluated by a primary care physician in Modesto who noted that Kayson had macrocephaly and a bulging anterior fontanelle. The physician told Aleena and Jared to transport Kayson to Children’s Hospital Central California in Madera where he was evaluated in the emergency room. His head circumference measured 47.5 centimeters which, when

adjusted for his age, exceeded the 99th percentile. Diagnostic imaging revealed chronic and ongoing subdural hemorrhaging. Kayson was admitted to the pediatric neurosurgery service and taken to the operating room where a surgeon drilled burr holes in his skull to relieve the pressure. Dr. Hyden was notified because the subdural fluid contained blood.

Dr. Hyden referred Kayson for a skeletal survey and an ophthalmoscopic evaluation which were negative for fractures, retinal hemorrhages or retinal pathology. Kayson also had a three-dimensional scan of the skull which revealed no fractures.

Dr. Hyden explained the nature of Kayson's head injury to Aleena and Jared. They were not aware of any birth trauma or other injury after Kayson's birth, including falling or shaking, that would explain the subdural hematomas and they did not appear concerned that someone may have harmed Kayson. They told Dr. Hyden that Jennifer R. alerted them in November that Kayson's head was too large and needed to be medically evaluated and they admitted they should have taken him to the doctor sooner. However, they explained that they did not have medical insurance in Modesto and they did not have transportation to take him to the emergency room.

Dr. Hyden reported, after reviewing the available medical information, that the most likely cause of Kayson's bilateral hematomas was trauma. He stated "the possibility of nonaccidental injury is highly concerning" given the lack of reported history of trauma in the medical record and no explanation for the subdural hematomas. Further, Dr. Hyden explained the absence of retinal hemorrhaging did not rule out the possibility of trauma because the hemorrhaging could have since resolved. Nevertheless, Dr. Hyden offered other possibilities that he had yet to rule out such as trauma at birth, postnatal trauma in the NICU, or a metabolic disorder. In order to rule out the first two, however, he needed to review Kayson's birth records. He ordered the metabolic testing and was awaiting the results. Dr. Hyden further stated that, even if Aleena and/or Jared

did not physically injure Kayson, their “significant delay” in obtaining medical treatment may have contributed to the increased intracranial pressure. Dr. Hyden stated:

“[E]ven if there were no issue of inflicted injury, there is also the concern for a significant delay in seeking medical care, with parental disregard of the recommendations from a medically knowledgeable relative to seek medical intervention. The delay may have contributed to the increasing compression on the cerebral cortex by the ongoing hemorrhaging, and caused increasing intracranial pressure, illustrated by the bulging fontanelle, the fussiness, and the significant macrocephaly.”

Social Worker Leticia Horta from Children’s Hospital reported Kayson’s medical condition to the Modesto Police Department and Stanislaus County Community Services Agency (agency) as possible child abuse. Officer Pippin spoke to Aleena and Jared at their residence in Modesto. They denied harming Kayson or seeing anyone else harm him. They believed his injuries were the result of his premature birth. Jennifer R. told Pippin she noticed Kayson’s head was abnormally large at birth and she believed his problem had been present since then. She also said she worked during the day but otherwise was around Aleena and Kayson. She never saw any sign of abuse.

Emergency response social worker Stacy Yang met with Aleena and Jared. They denied hitting, dropping or shaking Kayson. Aleena denied any alcohol use, current drug use, any arrest history or mental health issues. Jared said he was arrested in 2009 for trespassing and in 2010 for assault and a probation violation. They both drug tested and the results were negative.

Jennifer R. told Yang that Kayson’s head looked fine to her when she first saw him at the age of two weeks, but in October 2013, she observed his head growing bigger. In November, she told Aleena and Jared to schedule an appointment with the doctor to have him evaluated. She denied ever witnessing anyone in the home hit, drop or shake Kayson.

On December 26, 2013, Kayson was discharged to the care of Aleena and Jared with a safety plan.

On December 30, 2013, Public Health Nurse Beverly Eldridge assessed Kayson at his home. Eldridge noticed that Kayson had two large, soft lumps on the left side and crown of his head. Eldridge measured the circumference of Kayson's head at 47.3 centimeters and noted that he had difficulty tracking to the side and up and down with his eyes. He did not have control of his head and neck and could not grab a toy. Eldridge reviewed Kayson's medical records from Children's Hospital and noted that he suffered from nonaccidental trauma. She also received Kayson's birth records and concluded from them that he did not suffer birth trauma or intracranial hemorrhaging at birth.

On January 2, 2014, Yang took Kayson into protective custody and filed a dependency petition, alleging serious physical harm, failure to protect, and severe physical abuse. (§ 300, subds. (a), (b) & (e).) The agency placed Kayson in foster care.

On January 7, 2014, the juvenile court ordered Kayson detained and appointed a guardian ad litem for Aleena. The agency referred Aleena and Jared for a clinical assessment, substance abuse evaluation, and parenting classes. They subsequently began individual counseling to address Kayson's injury and how to protect him and they enrolled in a parenting class. They did not, however, require substance abuse treatment.

Also in January 2014, Kayson was admitted to Children's Hospital for insertion of a shunt followed by admissions for a shunt revision and drainage of cerebral fluid. In late January 2014, Kayson was placed with foster parents Richard and Tracey who were willing to adopt him.

In April 2014, Richard and Tracey filed the first in a series of "Caregiver Information" forms updating the juvenile court on Kayson's condition. They reported that Kayson was dependent on the shunt and would remain so long-term, requiring continued medical monitoring. In addition, he was diagnosed with global developmental

delays which could be lifelong. Because of the size and weight of his head, he had weak muscles and poor head control. He was unable to roll over either way, sit up or reach for toys, and had limited vocal sounds.

The agency filed a report for the jurisdictional/dispositional hearing, recommending the juvenile court sustain the petition and deny Aleena and Jared reunification services under section 361.5, subdivision (b)(5) and (6). The agency opined there was too great a risk to attempt reunification if Aleena and Jared could not explain the cause of Kayson's head injury. The agency also reported that a paternal uncle and aunt who lived in Oregon were interested in having Kayson placed with them.

The agency also filed an addendum report and included feedback from Aleena and Jared's service providers. Aleena's therapist, Maryanne Cose, reported that Aleena was not sure how Kayson was injured and did not know how she could have prevented his injury. Aleena also had difficulty formulating responses in therapy sessions and gave simplistic answers to questions. Jared's counselor reported concern about Jared's commitment to treatment given his many missed sessions and lack of accountability.

The agency also attached a report from pediatric neurologist Dr. Malavalli Seetharam who evaluated Kayson in April 2014. In the "History of Present Illness" section of his report, Dr. Seetharam noted that an "MRI showed bilateral subdural effusions and skull fracture." He also diagnosed Kayson with right hemiparesis, a weakening of the right hemisphere of the brain.

Dr. Hyden provided the agency an addendum report in June 2014, stating he received the laboratory test results for a metabolic abnormality and could rule it out. He reported, "Kayson had subdural hemorrhaging which did not occur at birth, and did not appear until sometime between 17 days and six weeks postnatally; nor are these hemorrhages related to birth trauma, infection, a coagulopathy or a metabolic abnormality. Nonaccidental trauma is highly concerning in this child, as there is no other

plausible explanation offered by the [parents] for the increased head circumference and underlying subdural hemorrhages ....”

In early June 2014, Richard and Tracey reported that Kayson’s medical needs were extensive and required several medical appointments a month. Since placed in their care, Kayson had had 25 medical appointments and Richard and Tracey invited Jared and Aleena to attend but they only attended two. In addition, Jared and Aleena looked to them to console Kayson. When he cried during visits, Jared and Aleena called Richard and Tracey to come and get Kayson instead of attempting to console him themselves. Richard and Tracey urged the juvenile court to terminate Jared and Aleena’s parental rights, but were willing to mentor Aleena and Jared in parenting Kayson if the juvenile court ordered reunification services for them.

In late June 2014, Richard and Tracey reported that Kayson had an MRI on May 15, 2014 which showed that his brain was still healing and pooling cerebral spinal fluid. His doctor prescribed occupational therapy, physical therapy and developmental medical therapy each once a week. They also stated that Kayson’s extended family members had not called, returned calls or visited Kayson in five months or inquired about his medical condition, but were discussing obtaining guardianship of him until Aleena and Jared could resume custody of him. Richard and Tracey believed relocating Kayson would deprive him of continuity of care and not serve his best interest. They were willing to provide an open adoption.

In July 2014, the juvenile court conducted a contested jurisdictional/dispositional hearing. Jared’s mother, Deana C., testified. She said she was a paramedic with four to five years of experience and a mandated reporter in the state of Oregon where she resides. She said Jared called her in early November 2013 and told her Kayson’s head was “kind of big.” Jared told her Kayson was sleeping and eating well and was not fussy. She told Jared to make an appointment with the pediatrician if he was concerned. Several weeks



later, Jared and Aleena went to her home with Kayson to spend the Thanksgiving holiday. They spent 10 days with her. She did not observe anything to suggest that there was something wrong with Kayson or that he needed to go to a doctor right away. During that time, she took care of Kayson. She said it was “fun” and “[h]e was awesome.” She saw nothing abnormal about him. He giggled, cooed and made faces and they played with him. He acted “like a normal little boy.” She noticed his head was big but not swollen. She just thought he had a big head like Jared did when he was a baby.

Aleena testified Kayson was taken into protective custody because he had a big head but she did not know why his head was big and why it was bleeding. She did not believe anyone injured him and she did not believe his large head was a sign that he was injured. She noticed Kayson’s head was large in November and multiple family members told her to take him to the doctor, but none of them said to take him to the doctor immediately or to take him to the emergency room. She did not think to take him to the emergency room because he did not act hurt. At the end of November, she called a list of approximately seven doctors trying to make an appointment. It took her about a week to make the appointment in December when his macrocephaly was diagnosed. She testified she visited Kayson once a week for two hours. She did not attend his doctor’s appointments because she did not have a car and gas. However, she was given advance notice of the appointments. She understood that Kayson had a shunt in his head and that his condition was serious. She believed she could take care of Kayson’s medical needs with the assistance of family members. She said she completed parenting classes and learned how to handle a child’s temper tantrum and make him feel special. She participated in individual counseling but did not discuss Kayson’s injuries with her therapist. They did, however, discuss how to protect him. She said she would “keep him close” and “watch out every little thing he does.”

Jared testified that Jennifer R. expressed concern about the size of Kayson's head sometime between November 8 and 13, 2013. Jared called his mother the same day Jennifer R. mentioned it to him. Around that same time, several other family members discussed Kayson's head size with him. Jared, Aleena and Kayson left to go to Oregon on November 22 but before they left, Aleena made a doctor's appointment for Kayson in December. Jared was in the room when Aleena made the appointment and he remembered her saying she was concerned about Kayson's head. Asked why they took the trip in Kayson's condition, Jared said he was concerned about Kayson, but Kayson did not show any signs that he was hurt or needed emergency medical intervention.

Jared further testified that he told the public health nurse that Kayson was not sleeping and was spitting up his food, crying and fussing. This occurred only at night when they were trying to get Kayson to sleep and it had been happening since his birth, approximately three to five times a week. When this happened, he walked Kayson, held him and stayed up with him. He was ultimately able to soothe him.

Jared was aware that Kayson would require monitoring of his shunt. He said he attended two visits and did not attend more because he did not have gas and could not miss any more school. He believed he could take care of Kayson's medical needs. His grandfather offered to let him use his truck and to give him money for gasoline.

Jared did not believe anyone hurt Kayson. He believed Kayson may have injured himself while sleeping by scooting and rolling into the side of his crib. He had seen Kayson do that a couple of times. He described how Kayson would put his feet down, try to push and arch his back. In doing so, he would turn to the side.

Jared said he felt badly for not taking Kayson to the hospital sooner. In the future, he would take such matters more seriously.

Kayson and Jared's attorneys introduced pictures of Kayson taken from mid-October to December 9, 2013, which the juvenile court admitted into evidence.

At the conclusion of the hearing, the juvenile court found by a preponderance of the evidence that Kayson is a child described by section 300, subdivisions (a), (b) and (e) and ordered him removed from Aleena and Jared's custody. The juvenile court also found that Kayson suffered severe physical abuse and denied Aleena and Jared reunification services under section 361.5, subdivision (b)(5) and (6).

In ruling, the juvenile court found based on Dr. Hyden's opinion that Kayson's injury was nonaccidental. The court characterized Kayson's injury as subdural hemorrhage, hemiparesis, bilateral subdural effusions and a skull fracture. The court further found that Aleena and Jared should have been aware that Kayson was seriously injured based on the increasing size of his head as depicted in the pictures of him admitted into evidence. The court was also upset that Aleena and Jared took Kayson to Oregon "with a bulging head" for 10 days but could not take him to the doctor because they had difficulty with transportation. The court believed that Aleena and Jared significantly delayed in obtaining medical treatment for Kayson and that their delay contributed to the severity of his injury.

Aleena filed a writ petition challenging the juvenile court's rulings. While reviewing the appellate record, we noted an inconsistency with respect to whether Kayson sustained a skull fracture. Dr. Seetharam's report that Kayson suffered a skull fracture was inconsistent with the brain scans performed, notably the three-dimensional head CT which showed Kayson did not have a skull fracture. Because the juvenile court factored in the presence of a skull fracture in determining that Kayson's injury was nonaccidental, we directed the parties to file supplemental briefs, addressing whether there was any evidence other than Dr. Seetharam's report to support a finding that Kayson suffered a skull fracture. The parties confirmed that Dr. Seetharam's reference to a "skull fracture" is not supported by the brain scans and that the CT scan ruled it out.

## DISCUSSION

1. *Denial of Reunification Services under Section 361.5, Subdivision (b)(5)*

Aleena contends the juvenile court erred in denying her reunification services under section 361.5, subdivision (b)(5) because there was insufficient evidence that Kayson was a child described by section 300, subdivision (e).

Section 361.5, subdivision (b)(5) provides as relevant here:

“(b) Reunification services need not be provided to a parent ... described in this subdivision when the court finds, by clear and convincing evidence, .... [¶] ... [¶]

“(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent ....”

Section 300, subdivision (e) provides:

“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] ... [¶]

“(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.”

“Severe physical abuse” under section 300, subdivision (e) includes “any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death ....”

Thus, in order to adjudge Kayson a dependent child under section 300, subdivision (e), the juvenile court had only to find by a preponderance of the evidence that he was severely physically abused by Aleena or by someone Aleena reasonably should have known was physically abusing him. In order to deny Aleena reunification services under section 361.5, subdivision (b)(5), the juvenile court had to find by clear

and convincing evidence that Aleena severely physically abused Kayson. (*K.F. v. Superior Court* (2014) 224 Cal.App.4th 1369, 1385-1386 (*K.F.*).)

In ruling, the juvenile court found that Kayson suffered severe physical abuse caused by either Aleena or Jared. The court stated it did not know which parent inflicted the injury or the mechanism of abuse, but concluded it was severe and consistent with nonaccidental injury. The court based its finding that Kayson's injuries were nonaccidental based on the nature of his injuries, Dr. Hyden's opinion that they were "highly concerning" for nonaccidental trauma, Aleena and Jared's inability to explain the cause of the injuries, and the absence of birth trauma or a metabolic cause.

Aleena contends Dr. Hyden's opinion that Kayson's injury was "highly concerning" for "nonaccidental trauma" is too inconclusive to support a finding of physical abuse. She further contends Dr. Hyden's opinion is weak, claiming there is no evidence Dr. Hyden spoke to her and Jared or any other witnesses, or reviewed all the available medical information in formulating his opinion.

Aleena's attempt to undermine Dr. Hyden's report at this juncture is unavailing. Any objections she has to the validity and strength of Dr. Hyden's medical opinion were forfeited when her attorney failed to object when the juvenile court entered it into evidence. Further, any effort now to examine the substance of Dr. Hyden's opinion is in essence an invitation for this court to reweigh its worth in the decisionmaking process. However, that is not our function as a reviewing court. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) Rather, our function is to decide whether there is sufficient evidence to support the juvenile court's findings based on Dr. Hyden's opinion.

We conclude substantial evidence supports the juvenile court's finding Kayson suffered severe physical abuse under section 300, subdivision (e) in light of Dr. Hyden's opinion. Dr. Hyden opined that the most likely cause of Kayson's subdural hematomas was trauma given the absence of a reported history of trauma, no explanation for the

subdural hematomas, and the absence of a metabolic cause. Further, the evidence supports a finding that Kayson suffered severe physical abuse: he was dependent on a shunt to relieve the intracranial pressure and suffered global developmental delay that was potentially lifelong. In addition, Aleena stated that Kayson was always in her care. On those facts, the juvenile court could reasonably find by a preponderance of the evidence that Aleena severely physically abused Kayson.

The question is whether that same evidence supports a finding by clear and convincing evidence under section 361.5, subdivision (b)(5). “[T]he broad reference to a clear and convincing evidence standard in the introductory sentence of section 361.5, subdivision (b) reflects a legislative intent to condition denial of reunification services on a heightened level of proof beyond the preponderance of the evidence standard applicable to jurisdictional findings. To effectuate the Legislature’s expressed intent to require proof by clear and convincing evidence before denying reunification services, ... the court must find that the *facts* establishing the section [300, subdivision (e)] abuse finding were clearly and convincingly proven.” (*K.F., supra*, 224 Cal.App.4th 1369, 1388.)

On appeal, we review the juvenile court’s order denying a parent reunification services for substantial evidence. We do so in consideration of the heightened burden of clear and convincing evidence. “Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. [Citation.]” (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262.)

We conclude that though the medical evidence in this case, including Dr. Hyden’s opinion, supports the juvenile court’s section 300, subdivision (e) finding, it does not support a denial of reunification services pursuant to section 361.5, subdivision (b)(5) under the heightened burden of proof. Dr. Hyden opined that Kayson’s subdural hematomas were most likely caused by trauma and, after ruling out birth trauma and a metabolic abnormality, maintained that Kayson’s injury was “highly concerning” for

“nonaccidental trauma.” In our view, “most likely” and “highly concerning” fall short of the high probability clear and convincing evidence requires. Further, though we cannot know how the juvenile court would have ruled had it known that Kayson did not have a skull fracture, we believe the presence or absence of a skull fracture in a suspected child abuse case is significant.

Real party in interest argues Dr. Hyden’s report was sufficient to support the juvenile court’s finding, stating “Dr. Hyden noted that the injury was consistent with ‘accelerative/decelerative rotational forces.’” Real party provides its own explanation as to what those forces signify, stating “These forces are consistent with shaking a baby and do not always result in a skull fracture.” Real party however misrepresents Dr. Hyden’s statement. Dr. Hyden stated, “While the ophthalmoscopic examination was negative, retinal hemorrhages from accelerative/decelerative rotational forces may have resolved over the period of time since this patient experienced trauma that similarly causes subdural hemorrhaging.” Dr. Hyden did not state that Kayson’s injury was consistent with accelerative/decelerative rotational forces.

We conclude substantial evidence does not support a denial of services under section 361.5, subdivision (b)(5) given the tentativeness of Dr. Hyden’s medical opinion and the factual error concerning the skull fracture.

2. *Denial of Reunification Services Under Section 361.5, Subdivision (b)(6)*

Aleena contends there was insufficient evidence she caused Kayson severe physical harm to support a denial of reunification services to her under section 361.5, subdivision (b)(6). We agree.

Section 361.5, subdivision (b)(6) provides in relevant part:

“(b) Reunification services need not be provided to a parent ... described in this subdivision when the court finds, by clear and convincing evidence, ... [¶] ... [¶]

“(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of ... the infliction of severe physical harm to the child ... by a parent ... and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent .... [¶] ... [¶]

“A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child’s body ... by an act or omission of the parent ....”

As we discussed above, substantial evidence supports the juvenile court’s adjudication of Kayson for severe physical abuse under section 300, subdivision (e). The question is, however, for purposes of section 361.5, subdivision (b)(6) whether substantial evidence supports a finding that the severe physical abuse Kayson suffered was a deliberate and serious injury caused by an act or omission on Aleena’s part. When we eliminate the presence of a skull fracture, the only evidence that Kayson’s injury was nonaccidental is the absence of any other explanation. There is no evidence Aleena deliberately injured Kayson or any theories as to when and how she might have injured him. There *is* evidence that Aleena was aware sometime in November that Kayson’s head was large and needed to be medically evaluated. However, there is no evidence Aleena knew that Kayson was injured and deliberately failed to seek medical treatment. Nor is there any evidence as to how her delay contributed to the severity of Kayson’s injury. Dr. Hyden faulted Aleena and Jared for not obtaining medical treatment sooner. However, his estimate of when Kayson’s injury occurred does not reconcile with the other medical information. Dr. Hyden estimated that Kayson’s subdural hemorrhaging occurred between 17 days and 42 days (six weeks) postnatally. However, the medical record reflects that Kayson was normocephalic and atraumatic at 57 days postnatally. This raises a question as to when the injury actually occurred, when Aleena should have known Kayson was injured, how long she delayed, and how much the delay contributed to Kayson’s ultimate injury.



Further, Deana testified that she did not see any signs that Kayson was suffering from a head injury and that he was interactive and playful during the Thanksgiving holiday. We do not know from the record what weight the juvenile court gave her testimony; however, it would tend to support Aleena's testimony she did not believe Kayson required emergency medical care.

Real party in interest contends the evidence supports a finding that Aleena's delay in obtaining medical treatment for Kayson constitutes an infliction of serious injury by omission envisioned by section 361.5, subdivision (b)(6). To that end, real party likens this case to *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292 (*Pablo S.*). *Pablo S.*, however, unlike this case, presents an extreme example of severe injury caused by omission. In that case, six-year-old Pablo fell and broke his left femur. (*Id.* at p. 294.) For nearly two months, his parents failed to seek medical treatment for him. (*Ibid.*) During that time, Pablo crawled with his arms to pull himself along the floor because he could not walk and a neighbor heard him crying and screaming. (*Ibid.*) His leg healed in a rotated position and was shorter than the other leg. (*Ibid.*) Finally, a neighbor took Pablo to the hospital. (*Ibid.*) Pablo told a social worker that he cried every day after the injury and that his parents ridiculed him because he could not walk. (*Id.* at p. 295.) He also said his mother hit his left leg and picked him up by the hands, made him walk and then dropped him on the floor. (*Ibid.*) Pablo's surgeon said that Pablo would have been in constant pain and that early medical treatment would have avoided the need for surgery. (*Id.* at pp. 296-297.) The juvenile court denied both parents reunification services pursuant to section 361.5, subdivision (b)(6). (*Pablo S., supra*, at p. 299.)

On appeal, the *Pablo S.* court affirmed the juvenile court's denial order. Thus, *Pablo S.* stands for the proposition that failure to provide medical attention constitutes infliction of serious injury by omission under section 361.5, subdivision (b)(6) where the failure to provide medical attention is a deliberate act which causes serious injury.

There is no evidence on this record that Aleena knew Kayson was suffering a serious head injury and deliberately failed to obtain medical treatment. That is not to say that she was not negligent in not having him medically evaluated as soon as she noticed his head was enlarged. However, her failure to act does not constitute the infliction of serious injury by omission as envisioned by section 361.5, subdivision (b)(6). Thus, we conclude substantial evidence does not support the juvenile court's order denying Aleena reunification services under section 361.5, subdivision (b)(6).

In sum, we conclude substantial evidence supports the juvenile court's jurisdictional finding that Kayson is a child described under section 300, subdivision (e), but does not support the juvenile court's orders denying Aleena reunification services under section 361.5, subdivision (b)(5) and (6). Thus, we grant the petition with respect to the juvenile court's denial of services orders and setting of the section 366.26 hearing.

#### **DISPOSITION**

Let an extraordinary writ issue directing respondent court to vacate its order issued on July 29, 2014, denying Aleena reunification services under section 361.5, subdivision (b)(5) and (6) and setting a section 366.26 hearing. Respondent court is further directed to conduct a new dispositional hearing, and after taking into consideration any new evidence or change in circumstances, make any appropriate orders. In all other respects, the petition is denied. This opinion is final forthwith as to this court.